

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

TIMOTHY BLIXSETH,
892 Southshore Boulevard
Incline Village, Nevada 89451

Plaintiff,

vs.

Civil Action No. _____

U.S. CUSTOMS AND BORDER
PROTECTION,

Serve:

Civil Process Clerk
Office of the United States Attorney for the
District of Columbia
555 Fourth Street, NW
Washington, DC 20530

William Barr
Attorney General of the United States
950 Pennsylvania Ave., NW
Washington, DC 20530-0001

U.S. Customs and Border Protection
90 K Street, NE
FOIA Division
Washington, DC 20229

Defendant.

COMPLAINT FOR INJUNCTIVE RELIEF
(Freedom of Information Act)

For his complaint against the U.S. Customs and Border Protection (“CBP”), Plaintiff alleges as follows:

1. This is an action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, to enjoin CBP from improperly withholding agency records and to order the production of all improperly withheld agency records.

2. The records are responsive to Plaintiff's FOIA Request submitted to CBP via Federal Express on July 3, 2019, and received by the agency on July 8, 2019.

3. CBP has failed to produce responsive records.

Parties

4. Plaintiff is an individual with residence in Nevada.

5. CBP is an agency of the United States of America under 5 U.S.C. § 552(f)(1) and 5 U.S.C. § 551(1).

Jurisdiction and Venue

6. This Court has jurisdiction over this claim pursuant to 28 U.S.C. § 1331 and 5 U.S.C. § 552(a)(4)(B).

7. Venue is proper pursuant to 5 U.S.C. § 552(a)(4)(B).

Background

8. On July 3, 2019, Plaintiff submitted his FOIA request to CBP via Federal Express. This FOIA request ("the Request") seeks records regarding Plaintiff, his former airplane with Aircraft Tail Number N650GC, and several companies, including communications between CBP and Immigration and Customs Enforcement regarding certain search terms. A true and correct copy of the Request is attached as Exhibit A. Plaintiff also attached relevant records to his Request. Exhibit A, attached Exhibit 1.

9. In a letter dated July 9, 2019, CBP acknowledged receipt of the Request, stating that it received the Request on July 8, 2019, and identified the Request as Request No. CBP-2019-066364. A true and correct copy of the July 9, 2019 response is attached as Exhibit B.

10. On July 11, 2019, Jodi M. Drengson, CBP Government Information Specialist, contacted Plaintiff's counsel and requested a release from Plaintiff providing permission to

release information to Plaintiff's counsel. A true and correct copy of the July 11, 2019 email is attached as Exhibit C. Ms. Drengson and Plaintiff's counsel also discussed CBP offices where records should be located.

11. On July 12, 2019, Plaintiff's counsel sent Plaintiff's signed release to Ms. Drengson. A true and correct copy of the July 12, 2019 email and attached signed release are attached as Exhibit D.

12. On July 12, 2019, CBP sent an email notification that the Tracking No. had changed to CBP-OFO-2019-066364. A true and correct copy of the July 12, 2019 email is attached as Exhibit E. The email stated that this change is "normally due to the request being transferred to another agency . . . or to a sub-agency to process it." Exhibit E. The long description of the request included the following note: "[a]s per conversation with requester documents may be held by Riverside, CA, Thermal, CA, Tucson, AZ, and Los(sic) Vegas, NV." *Id.*

13. Accordingly, CBP has not made a determination on the Request within the time limits prescribed by FOIA, 5 U.S.C. § 552(a)(6)(A)(i). *See also* 5 U.S.C. § 552(a)(6)(A)(ii)(I).

COUNT I - FAILURE TO COMPLY WITH FOIA

14. Plaintiff incorporates each of the foregoing paragraphs of this Complaint.

15. Pursuant to FOIA, 5 U.S.C. § 552(a), Plaintiff has a statutory right to access the requested agency records.

16. CBP has failed to comply with the time limits prescribed by FOIA, 5 U.S.C. § 552(a)(6)(A)(i).

17. CBP has improperly withheld agency records responsive to Plaintiff's FOIA Request.

Prayer for Relief

WHEREFORE, Plaintiff respectfully requests that this Court enter a judgment for Plaintiff and award the following relief:

- a. Enjoin CBP from withholding the requested records and order CBP to produce those records to Plaintiff in accordance with FOIA, 5 U.S.C. § 552;
- b. Expedite the proceedings in this action;
- c. Award Plaintiff his costs and attorney's fees reasonably incurred in this action, pursuant to 5 U.S.C. § 552(a)(4)(E); and
- d. Award Plaintiff such other and further relief as the Court may deem just and proper.

Respectfully submitted,

October 17, 2019

/s/ Lisa Norrett Himes
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